

Exhibit D

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
ORRIN S. ANDERSON,) Adv. Proc. No.
Debtor.) 15-08214 (RDD)

ORRIN S. ANDERSON, a/k/a ORRIN)
ANDERSON, a/k/a ORRIN SCOTT)
ANDERSON,)
Debtor and Plaintiff on)
behalf of himself and all)
others similarly situated,)

v.)
CREDIT ONE BANK, N.A.,)
Defendant.)
_____)

DEPOSITION OF VICKI SCOTT

Taken on June 3, 2016

At 9:28 A.M.

300 South Fourth Street, Suite 800
Las Vegas, Nevada

Reported by: Jennifer Clark, RDR, CRR, CCR #422

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1 that would stop Credit One Bank from doing
 2 that.
 3 A. All I know is Credit One Bank
 4 reports accurately to the credit bureau on
 5 accounts that we sell.
 6 Q. Do you know if Credit One Bank
 7 does report to the credit bureaus that debts
 8 that it has sold have been discharged in
 9 bankruptcy?
 10 A. No.
 11 Q. No, you don't know, or no, it
 12 doesn't do that?
 13 A. No, it doesn't do that.
 14 Q. Okay. Do you know what is
 15 stopping it from doing that?
 16 A. We don't own the account.
 17 Q. And the fact that you don't own
 18 it stops you from letting the credit bureaus
 19 know that you know that this debt has been
 20 discharged in bankruptcy.
 21 A. The bank does not know.
 22 Q. The bank does not know.
 23 If the bank does know, what does
 24 the bank do?
 25 A. The bank reports on accounts that

1 to contact the person the account was sold
 2 to.
 3 Q. I understand that's what the bank
 4 does, but what's stopping the bank from doing
 5 that itself?
 6 A. Once the accounts are sold, after
 7 six months, we purge the accounts from our
 8 system because we no longer own them.
 9 Q. What do you mean, you purge them
 10 from your system?
 11 A. We don't -- do not keep them on
 12 our system of record. They are purged.
 13 Q. Okay. But a customer calls you
 14 up after six months and they say, hey, my
 15 account is showing up on my credit report as
 16 being charged off but it's been discharged in
 17 bankruptcy. Why is that? You're telling me
 18 that you tell the customer to notify the
 19 credit reporting agencies or the party that's
 20 purchased this themselves.
 21 My question to you is, when that
 22 happens, what is stopping the bank at that
 23 point from notifying the credit reporting
 24 agencies that that debt has been discharged
 25 in bankruptcy?

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1 it owns.
 2 Q. But you said the bank does not
 3 know. Are you telling me that the bank --
 4 after the bank sells a debt, it never knows
 5 whether or not that debt has been discharged
 6 in bankruptcy?
 7 A. We are not notified, that is
 8 correct.
 9 Q. If a customer -- so customers
 10 have never called up Credit One Bank that you
 11 know of and said, hey, why does my debt to
 12 Credit One Bank still show up on my credit
 13 report? Why hasn't it been corrected because
 14 it's been discharged in bankruptcy? And when
 15 the bank hears that, it doesn't do anything?
 16 A. If the account is sold, we
 17 instruct the customer that their account is
 18 sold and who they need to contact.
 19 Q. Okay. But what's stopping the
 20 bank -- after the customer tells you that,
 21 you do instruct the customer to do that.
 22 What's stopping the bank from letting the
 23 credit bureau agencies know? The bank
 24 itself.
 25 A. The bank instructs the customer

1 MR. SLODOV: Objection. Vague
 2 and ambiguous. Compound as to form.
 3 You can answer.
 4 THE WITNESS: The account is
 5 purged from our system.
 6 BY MR. SHELLY:
 7 Q. I understand it's purged from
 8 your system. So you're telling me when it's
 9 purged from your system, the fact that you've
 10 purged it, that prevents you from notifying
 11 the credit reporting agency about this
 12 discharge in bankruptcy even though the
 13 customer has called up and said, hey, my
 14 account -- that debt has been discharged in
 15 bankruptcy?
 16 A. The bank does not own the
 17 account.
 18 Q. You're telling me these facts.
 19 The bank does not own the account. It's been
 20 purged from the system. I understand both of
 21 those things, okay?
 22 A. Uh-huh.
 23 Q. The bank now doesn't own the
 24 account. It's purged from the system. The
 25 bank now gets a call from its customer -- at

3 (Pages 6 to 9)

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1 Q. Okay. First of all, when you say
2 "Sherman," who are you referring to there as
3 Sherman?
4 A. Specifically?
5 Q. Yes.
6 A. Jon Mazzoli.
7 Q. But when you say "Sherman," I'm
8 not aware of an entity that's just called
9 Sherman. Are you talking about the Sherman
10 Financial Group or some other entity owned by
11 the Sherman Financial Group?
12 A. Oh, I'm talking about Sherman
13 Financial Group.
14 Q. So the work that you're doing at
15 Credit One Bank regarding the sale of this
16 debt to these third-party buyers, that's
17 overseen by Sherman Financial Group?
18 A. And the bank has a role in that,
19 yes.
20 Q. Who has the final say on whether
21 or not debt is going to be sold to one of
22 these third-party buyers? Is it Jon Mazzoli?
23 A. The bank jointly makes the
24 decision with Sherman.
25 Q. Would the bank ever sell any debt

1 A. As a representative of MHC.
2 Q. But MHC -- I know what I think
3 MHC is from the facts here, but from your
4 perspective, what is MHC?
5 A. MHC is an entity.
6 Q. Is it an entity affiliated or
7 owned by Credit One Bank?
8 A. I don't know for sure how the --
9 Q. But you understand it to be an
10 entity separate and apart from Credit One
11 Bank, in any event.
12 A. Yes.
13 Q. And FNBW, what is that?
14 A. First National Bank of Marin.
15 Q. And that's a separate entity
16 similar to MHC, separate and apart from
17 Credit One Bank.
18 A. Yes.
19 Q. Why are you signing affidavits on
20 behalf of them regarding these sales?
21 A. It's part of my duties as owning
22 the asset sale piece and the recovery piece
23 of my job responsibilities.
24 Q. Who owns the asset sale piece and
25 the recovery piece that you're referring to

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Page 25

1 to a third-party buyer that Jon Mazzoli said,
2 no, you can't sell that to that third-party
3 buyer?
4 A. No.
5 Q. Do you understand Jon Mazzoli's
6 position at Sherman?
7 A. Based on his E-mail signature
8 line, it states he's a director.
9 Q. Okay. You said signing
10 affidavits and bills of sale post sale. What
11 were you referring to there?
12 A. The general paperwork that goes
13 with selling a pool of accounts.
14 Q. And you're actually signing those
15 affidavits and bills of sale?
16 A. Yes.
17 Q. And you're signing them on behalf
18 of Credit One Bank?
19 A. And MHC and FNBW.
20 Q. So you're signing it on behalf of
21 all three entities.
22 A. Yes.
23 Q. How are you affiliated with --
24 first of all, MHC, what are you referring to
25 there?

1 there? You said, "It's part of my duties as
2 owning the asset sale piece and the recovery
3 piece of my job responsibilities."
4 A. It's part of my responsibility to
5 sign those documents.
6 Q. Okay. But who owns the asset
7 sale piece that you're signing off on?
8 MR. SLODOV: Objection as to
9 form.
10 Go ahead and answer if you can.
11 THE WITNESS: Ultimately, the
12 bank owns the process.
13 BY MR. SHELLY:
14 Q. What do you mean, "the process"?
15 The bank owns what? Are you talking --
16 you're not talking in an actual, like, I own
17 my car sort of ownership.
18 A. No.
19 Q. You're talking about owning a
20 process that's used sort of in a vernacular
21 that businesses use on a daily basis. You're
22 the one, you mean, like, responsible for the
23 process; correct?
24 A. Yes.
25 Q. Okay. But I'm asking you in

7 (Pages 22 to 25)

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1 Z-U-A-R-D-O.
 2 Q. And what's her position at Credit
 3 One Bank?

4 A. She is a recovery manager.

5 Q. Who is it that told you that you
 6 were authorized to sign these affidavits and
 7 documents on behalf of MHC and FNB?

8 A. The general counsel who is no
 9 longer with the bank when I took over the
 10 position.

11 Q. Is that Mr. Shutt?

12 A. Yes.

13 Q. And did you have any -- do you
 14 recall what exactly he said to you? He just
 15 said -- or did he just say it's okay for you
 16 to sign these documents?

17 MR. SLODOV: Objection. Calling
 18 for legal advice.

19 And beyond acknowledging that the
 20 statement was made, I'd instruct you not
 21 to answer.

22 BY MR. SHELLY:

23 Q. Did he have any duties there
 24 other than general counsel?

25 A. I believe he also managed the

1 A. That's correct.

2 Q. So do you know why he told you it
 3 was okay for you to go ahead and sign these?

4 A. I had taken over the position
 5 from someone who was no longer at the bank,
 6 and he was advising me that it was my duty to
 7 sign those documents and I had the authority
 8 to do so.

9 Q. Who was it that was signing them
 10 before you?

11 A. Prior to me having the recovery
 12 team, I believe it was Arturo Perez.

13 Q. Does anybody else sign any
 14 documents in terms of these sales of debt on
 15 behalf of MHC and FNB other than yourself?

16 A. Yes.

17 Q. Who else signs documents?

18 A. They sign after me.

19 Q. Okay.

20 A. And so there's a notary that
 21 signs with me, and then the documents are
 22 sent to Sherman, and they're also signed by
 23 various representatives there.

24 Q. So before -- okay. So in any
 25 sale that goes to a third party, you're

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1 compliance department.

2 Q. Do you know, when he was telling
 3 you that you should go ahead and sign these
 4 affidavits, whether he was advising you as an
 5 attorney or as an officer of Credit One Bank?

6 A. I don't understand what you mean.

7 Q. Yeah. Was he acting -- do you
 8 know, if you know, was he acting as an
 9 attorney when he told you to sign these
 10 documents, or was he acting as an officer of
 11 the bank, telling you to go ahead and sign
 12 these?

13 A. I don't recall any special
 14 language around it, no.

15 Q. So you didn't have an
 16 understanding at that time whether he was
 17 giving you -- whether he was giving you
 18 direction as a senior officer there or
 19 whether he was giving you direction as an
 20 attorney; is that correct?

21 A. I don't -- I don't recall there
 22 being a distinction.

23 Q. So you don't -- you don't recall
 24 feeling he was doing one thing or the other;
 25 is that correct?

1 Credit One Bank, MHC, and FNB's
 2 representative with respect to those
 3 documents, but those documents also are then,
 4 after you sign them, co-signed by someone on
 5 behalf of Sherman; is that correct?

6 A. Yeah, different parts of the
 7 chain of title, yes.

8 Q. What part of the chain of title
 9 are you signing off on?

10 A. The bill of sale.

11 Q. And what specifically are you
 12 attesting to in those affidavits?

13 A. That the accounts are eligible
 14 for sale and that I have knowledge that
 15 they're eligible for sale and that I'm a
 16 representative of Credit One Bank, MHC, FNB,
 17 and that they were conforming accounts.

18 Q. How do you make the determination
 19 that they're eligible on behalf of those
 20 three entities?

21 A. It's based on preexisting
 22 criteria via contracts that creates the pool
 23 of accounts to sell.

24 Q. And you go and -- are these pools
 25 arranged on a monthly basis?

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1 A. Yes.
 2 Q. And you actually physically look
 3 at what's in that pool to make sure that what
 4 you're attesting to, that they're eligible
 5 for sale, that, in fact, they are eligible
 6 for sale?
 7 A. Yes. There is a spot audit done.
 8 Q. A spot audit?
 9 A. Uh-huh.
 10 Q. What's that mean?
 11 A. A random sample of accounts.
 12 Q. And you do that random sampling?
 13 A. Yes.
 14 Q. How do you do that?
 15 A. I review 30 accounts in the
 16 system of record.
 17 Q. And how many accounts make up a
 18 pool?
 19 A. It depends on the charge-off
 20 volume that month or the bankruptcy volume or
 21 the deceased volume.
 22 Q. So there are three different
 23 pools each month. There's a charged-off, a
 24 bankruptcy, and a deceased pool?
 25 A. Yes.

1 pool, what's the smallest and largest in
 2 terms of units?
 3 A. Oh, well, I was lumping those all
 4 together so --
 5 Q. Oh, okay. So you don't
 6 actually -- even though you're selling three
 7 separate pools, you're talking, in terms of
 8 that monthly amount of all three of those
 9 pools, would be from 500 accounts to 50,000
 10 accounts.
 11 (Pages 37 through 41 were
 12 deemed confidential and are
 13 bound separately.)
 14
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1 Q. And you sell each and every one
 2 of those pools?
 3 A. Yes.
 4 Q. And in a charged-off pool, what's
 5 the least and what's the most that a monthly
 6 pool would consist of?
 7 A. I don't understand.
 8 Q. Just so I have a range, what's
 9 the least you've seen -- in terms of a
 10 charged-off pool for, say, the month of
 11 April, you know, that would get sold, you
 12 said it varies. What would be -- what would
 13 be the smallest amount you've seen on a
 14 monthly basis within that pool being sold and
 15 what's the largest? Just roughly.
 16 A. Are you talking units, or are you
 17 talking dollars?
 18 Q. I'm talking units in terms of
 19 accounts. That's what you mean by "units";
 20 right? Accounts?
 21 A. Uh-huh.
 22 Q. Yeah.
 23 A. I mean, smallest is probably
 24 somewhere around 500, largest maybe 50,000.
 25 Q. And same thing for the bankruptcy

1 * * * * *
 2 BY MR. SHELLY:
 3 Q. So the actual -- can you describe
 4 for me the actual sale process itself, how
 5 that occurs. I understand the documents that
 6 you are signing off on with respect to this
 7 sale, but as to your understanding as to how
 8 this sale originates, the pooling together of
 9 these things right through the actual sale to
 10 the third party, can you walk me through that
 11 process, please.
 12 A. On or about the 5th of the
 13 month -- and this is an example for
 14 contractual charge-off.

15 Q. Okay.
 16 A. A ticket is opened with FDR to
 17 gather the pool of accounts eligible for sale
 18 based on certain criteria. FDR cuts the sale
 19 file. They send it back to the bank. We
 20 send it to Resurgent to scrub for
 21 nonconforming for the pool. They send the
 22 file back to us separated based on the two
 23 buyers. Once all the paperwork and bill of
 24 sale is signed, the accounts are released to
 25 the buyer, and the paperwork is signed and --

10 (Pages 34 to 42)

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1 A. I don't know who made the
2 decision.

3 Q. Okay. Do you have an
4 understanding as to why they are purged after
5 six months?

6 A. There's a cost associated with
7 housing them on the Recovery One system.

8 Q. Do you know what that cost is?

9 A. No, not off the top of my head.

10 Q. So if Credit One were to maintain
11 those records, say, for a year or two years
12 after an account was no longer performing,
13 they'd incur an additional charge from FDR
14 just to maintain that in that system of
15 record. That's your understanding?

16 A. In addition to the -- the
17 majority of accounts housed in Recovery One,
18 we don't own anymore, which is why they're
19 purged.

20 Q. What accounts are in Recovery One
21 that you do own?

22 A. Accounts that we do not sell.

23 Q. And which accounts don't you
24 sell?

25 A. Accounts that we do not sell

1 ongoing information.

2 Q. Why don't you get ongoing
3 information at that point?

4 A. We don't receive notices on
5 accounts that we sell or no longer are
6 performing for us.

7 Q. Why don't you?

8 A. That's the process that's in
9 place.

10 Q. Okay. And who set that process
11 up?

12 A. That process was set up years
13 ago, and I can't tell you who. I do not
14 know.

15 Q. So in the scenario I was talking
16 about earlier, somebody calls up and said --
17 I got you. Okay. So you actually delete
18 that tradeline.

19 So there wouldn't be an
20 instance -- when you've deleted that
21 tradeline, do you notify the credit reporting
22 agency that you deleted that tradeline and
23 that that charged-off debt no longer exists?

24 A. We send it to -- through a
25 decision master, a file is sent to the

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1 include charge-off balances less than \$50.

2 Q. Okay.

3 A. Accounts that previously settled
4 with us or did a principal balance payoff
5 with us, are in litigation, bankrupt accounts
6 that are less than \$100, they're in there for
7 a period of time, and then they're purged.

8 Q. And then they're purged.

9 So there are -- so if a bankrupt
10 account for less than \$100 were in your
11 system for six months, and at the time of
12 that six months coming up, you didn't know
13 the status of that bankruptcy proceeding,
14 you'd go ahead and purge that account
15 anyways; is that correct?

16 A. Yes.

17 Q. And if eight months after getting
18 into that R1 system and two months after it
19 was purged, that bankruptcy debt was
20 discharged in bankruptcy, what would the bank
21 do?

22 A. Accounts that are \$100 or less
23 that were bankrupt, those tradelines get
24 deleted once they move into a different
25 warehouse, because we won't actively get

1 bureaus to delete the tradeline.

2 Q. So when that notification goes to
3 the bureaus, that debt that is less than \$100
4 on this bankrupt account, that debt no longer
5 shows up on that person's credit report.
6 It's gone completely. There's not a notation
7 on there that says charged off, is there.

8 A. No.

9 Q. And when you say there are
10 accounts that are in litigation that are in
11 this R1, what do you mean by "litigation"?
12 You're not talking about bankruptcy there, I
13 take it.

14 A. No.

15 Q. You're talking about when someone
16 is actually suing the bank and has some sort
17 of dispute with the bank; is that correct?

18 A. Yes.

19 Q. Do you know why, when the bank
20 sells debt that is in bankruptcy to a third
21 party, it doesn't delete the tradeline,
22 similar to the way it does when six months
23 have passed on a bankruptcy of less than
24 \$100?

25 A. The bank reports accurately. The

12 (Pages 47 to 50)

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1 bankruptcy and charge-off is sold to another
2 lender when we sell that account.

3 Q. Okay. But my question is, do you
4 know why they don't actually just go ahead
5 and delete the tradeline the same way they do
6 with a bankruptcy of less than \$100 after six
7 months have passed in the R1 system?

8 A. We are reporting the account
9 accurately that -- we are bound to do so by
10 the FCRA upon selling the account.

11 Q. Okay. I'm not asking you if
12 you're doing anything accurately or not. I'm
13 asking you if you know why the bank does not
14 do exactly the same thing that it does on
15 bankruptcies of less than \$100 that's purged
16 from its system after six months in the R1
17 but are less than \$100.

18 A. That would be reporting
19 inaccurately, and the bank is reporting the
20 account accurately.

21 Q. Is the bank -- when the bank
22 deletes the tradeline that's less than \$100
23 as being deleted, is it reporting accurately
24 at that time?

25 A. We've already taken the loss for

1 I know, you know, you've got that drilled
2 into your head, that they're reporting it
3 accurately. I understand that. I'm not
4 asking you if it's accurate or not.

5 I'm asking you if there's
6 anything that's actually preventing the bank
7 from deleting that tradeline at that point in
8 time.

9 MR. SLODOV: Objection. Asked
10 and answered.

11 You can answer.

12 THE WITNESS: The bank is
13 reporting it accurately per our
14 responsibilities for the FCRA.

15 BY MR. SHELLY:

16 Q. So are you telling me there's
17 nothing preventing you from doing that?

18 A. The bank is reporting it
19 accurately as --

20 Q. Could they -- go ahead.

21 A. As they're bound to do so.

22 Q. Could the bank delete the
23 tradeline at that point in time?

24 A. The bank needs to report it
25 accurately.

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1 that account, and we are purging it from our
2 system, and we are reporting it accurately
3 because we have already recognized it as a
4 loss.

5 Q. So when you -- but when you're
6 selling it to somebody else as a charge-off
7 of zero dollars, you don't recognize it as a
8 loss then?

9 A. The bank recognizes it has a loss
10 upon charge-off.

11 Q. So why doesn't it delete the
12 tradeline then?

13 A. The bank reports the tradeline as
14 sold to another lender because that is what
15 has happened.

16 Q. Do you know if there's anything
17 preventing the bank from deleting the
18 tradeline at that point in time?

19 MR. SLODOV: Objection. Asked
20 and answered.

21 You can answer.

22 THE WITNESS: The bank is
23 reporting the tradeline accurately.

24 BY MR. SHELLY:

25 Q. Okay. I hear that, and I know --

1 Q. Okay. Could the bank delete it
2 at that point in time, though?

3 MR. SLODOV: Objection. Asked
4 and answered four times now.

5 MR. SHELLY: She hasn't answered
6 it once yet, but when she does, I'll let
7 you know.

8 THE WITNESS: I don't know.

9 BY MR. SHELLY:

10 Q. Okay. That's an answer. You
11 don't know. The bank could delete it. They
12 couldn't delete it. You really don't know,
13 do you?

14 And do you know why they do one
15 thing or the other, why they choose not to
16 delete it as opposed to deleting it? Do you
17 know why?

18 MR. SLODOV: Objection. Asked
19 and answered.

20 THE WITNESS: The bank is
21 reporting accurately on accounts that
22 they sell.

23 BY MR. SHELLY:

24 Q. But when I asked you could the
25 bank delete it at that point in time, you

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1 said you don't know. You don't know if the
 2 bank could delete it at that point in time,
 3 do you?

4 A. I stated I don't know.

5 Q. Is there anyone at Credit One
 6 Bank that would be able to answer that
 7 question, whether or not the bank could
 8 delete it at that point in time?

9 A. I don't know.

10 Q. If you wanted to know, you were
 11 curious and you thought, jeez, could we just
 12 delete this at this point in time, who would
 13 you ask?

14 A. I would ask general counsel.

15 Q. Do you know if any decision has
 16 ever been made at Credit One Bank not
 17 actually affirmatively -- an affirmative
 18 decision not to delete such tradelines at
 19 that point in time?

20 A. Can you repeat that, please.

21 Q. Sure. Do you know if any
 22 decision has affirmatively been made at
 23 Credit One not to delete those tradelines at
 24 that point in time?

25 A. The bank is reporting those

1 buyer?

2 A. It would be a contract between a
 3 third-party buyer and MHC.

4 Q. Why just MHC?

5 A. When the accounts charge off, the
 6 account and receivable are married up with
 7 MHC at that charge-off. The bank is just a
 8 servicer.

9 Q. When you say "married up," can
 10 you describe that married-up process.

11 A. The bank services the receivable
 12 up until the point the account is charged
 13 off. Then the receivable and the charge-off
 14 come together at MHC.

15 Q. What's the difference between the
 16 receivable and the charge-off? Who has the
 17 charge-off and who has the receivable that's
 18 married up at MHC?

19 A. Who has the account and who has
 20 the receivable?

21 Q. Well, you said what's married up
 22 there -- you said -- I'm not trying to
 23 confuse you. I'm just trying to understand,
 24 from your perspective, what's going on here.

25 You said that the charge-off and

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1 accounts accurately, as it's bound to do so.
 2 Q. Okay. I understand that, and I
 3 really do get that, okay. I understand that
 4 from your perspective, what they're doing is
 5 what they're bound to report accurately, and
 6 you're telling me they do report accurately?

7 Then my question is, could they
 8 nevertheless delete it, and you said you
 9 don't know, okay.

10 I'm asking you if you know if
 11 there's ever been an affirmative decision
 12 made at Credit One Bank not to delete those
 13 things at that point in time.

14 A. I don't know.

15 Q. Okay. We talked about this. We
 16 were going through this process. We talked
 17 about you generate a ticket. It goes to FDR,
 18 which is the system of record, to gather a
 19 pool, and that they use certain criteria.

20 What criteria do they use to
 21 gather these pools at that point in time?

22 A. That criteria is based on what is
 23 in the contract for that particular pool.

24 Q. And that would be a contract that
 25 exists between Credit One and a third-party

1 the receivable are married up with MHC. How
 2 does that --

3 A. The account -- the account and
 4 the receivable.

5 Q. Okay. So the account -- the
 6 charged-off account. And who has the
 7 charged-off account that's going to MHC
 8 that's being married up with the receivable?

9 A. FNB.

10 Q. FNB has the account, or FNB has
 11 the receivable?

12 A. Now you're confusing me. I
 13 don't -- I don't know.

14 Q. Okay. I'm not trying to confuse
 15 you, so let's just -- let's just -- really
 16 let's just bring it down to a real simple
 17 level?

18 Before this thing is married up
 19 at MHC, there's a receivable, and it hasn't
 20 charged off or anything like that, okay.
 21 What exists at FNB?

22 A. I don't know. I can't answer it.
 23 I can't --

24 Q. Okay.

25 A. You've got my brain all turned

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1 pools, wherever they're going, are really
 2 sold through whatever contractual
 3 relationship Sherman Originator has with
 4 whoever ultimately buys that pool; is that
 5 correct?

6 A. Yes.

7 Q. You said a portion of these pools
 8 goes to Midland. Where does the remaining
 9 portion go?

10 A. Sherman.

11 Q. Not -- does it stay at Sherman
 12 Originator, or it goes to Sherman Financial?

13 A. It's sold to Sherman
 14 Originator III.

15 Q. So they just keep it. The
 16 portion that isn't sold to Midland, they
 17 keep?

18 A. Yes.

19 Q. So currently -- currently, all
 20 the sold debt goes from MHC to Sherman
 21 Originator III, and then Sherman
 22 Originator III, through its contractual
 23 relationships with Midland, is selling a
 24 portion of that -- those pools to Midland,
 25 and Sherman Originator III is keeping the

1 getting my coffee so -- but do you know when
 2 did it change that -- when did it become that
 3 all of this debt was being sold just to
 4 Midland?

5 A. It's not.

6 Q. It's not?

7 A. You said --

8 Q. As far as a third party. In
 9 other words, Sherman --

10 A. You said all of it is sold to
 11 Midland. That's --

12 Q. Well, all of the debt that is not
 13 going to be retained by Sherman
 14 Originator III is sold to Midland; correct?

15 A. Correct.

16 Q. Okay. When did that become the
 17 norm? In other words, when did Sherman
 18 Originator stop selling to anyone other than
 19 Midland?

20 A. We -- they stopped selling --
 21 actually, MSW stopped purchasing.

22 Q. Okay.

23 A. So -- and that was, I believe,
 24 May of 2015.

25 Q. Okay.

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1 remaining portion of those pools. Am I
 2 understanding that correctly?

3 A. Yes.

4 Q. Okay. Currently, are there any
 5 other third-party buyers that are being sold
 6 to other than Midland?

7 A. No.

8 Q. Are you aware of it -- and I know
 9 we talked about some of those earlier.

10 You are aware that in the past,
 11 other third-party buyers other than Midland
 12 were buying this debt from Sherman
 13 Originator III; correct?

14 A. Yes.

15 Q. Okay. Having gone through an
 16 hour of the deposition and a little break, do
 17 you recall any of the other third-party
 18 purchasers other than the ones you mentioned
 19 this morning like RAZOR and UHD?

20 A. RAZOR, UDH.

21 Q. UDH. I'm sorry.

22 A. MSW. Yeah, I wasn't thinking
 23 about that on break. No.

24 Q. That's okay. That's okay. I
 25 wasn't either. I was just worried about

1 A. And I believe UDH was some time
 2 early -- or in 2015 as well. I'm not -- I
 3 don't recall the date, though.

4 Q. Do you know if UDH stopped
 5 purchasing, or did -- was it a decision not
 6 to sell to them anymore?

7 A. It was a decision not to sell.

8 Q. And what about RAZOR?

9 A. That was prior to me.

10 Q. Prior to you. Okay.

11 Do you know why -- if that was a
 12 decision not to sell to them, or was that a
 13 decision by RAZOR not to purchase?

14 A. I do not have knowledge of that.

15 Q. Do you have an understanding as
 16 to why -- MSW is an entity different than
 17 Midland; correct?

18 A. Yes.

19 Q. Do you have an understanding as
 20 to why Midland decided to stop purchasing in
 21 May of '15?

22 A. Midland didn't decide to stop
 23 purchasing.

24 Q. I'm sorry. Why MSW decided to
 25 stop purchasing in May of '15.

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<p>1 match from the cardholder system of record, 2 FDR, to what's on the file, and if there's a 3 match, then the account is properly coded as 4 bankrupt, and it will charge off the next 5 day.</p> <p>6 Q. So IT -- in-house IT at Credit 7 One Bank gets this file from Resurgent, and 8 they match that information up with the 9 system of record to determine if the given 10 account that's in that system of record is, 11 in fact, this bankrupt account. Is that 12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And then once IT makes that 15 determination, how do they notify or do 16 they -- you said it's coded. Who actually 17 does the coding after IT has made that match?</p> <p>18 A. Well, it's automatic. It's 19 systemic.</p> <p>20 Q. Okay.</p> <p>21 A. So they'll put a bankruptcy code 22 on the account, which will force the account 23 to go into a queue.</p> <p>24 Q. So there's not somebody at IT 25 actually comparing the file from Resurgent</p>	<p>1 Q. So that would be, like, mailers, 2 anything at all, you know, in terms of 3 marketing. Am I correct there?</p> <p>4 A. No.</p> <p>5 Q. What do you mean, then?</p> <p>6 A. The media we supply to buyers 7 upon sale is the media that they will house 8 for us.</p> <p>9 Q. I got you. Okay. What does that 10 media consist of? When you say "media," what 11 are you referring to?</p> <p>12 A. Generally, it will consist of up 13 to 24 months of statements, the application, 14 a copy of the application, and the most 15 recent account agreement and the -- that's 16 it.</p> <p>17 Q. Okay.</p> <p>18 A. Those three things.</p> <p>19 Q. And after you sold -- so this is 20 for sold now. Okay?</p> <p>21 A. Yes.</p> <p>22 Q. Who has access to that data 23 that's being housed by Resurgent. Does the 24 bank and the buyer both have -- do they both 25 have access to that?</p>
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<p>1 and the system of record. It comes into IT, 2 and there's some sort of a program that 3 matches --</p> <p>4 A. That matches it.</p> <p>5 Q. -- that file from Resurgent up 6 with the system of record.</p> <p>7 A match is made, and it's just 8 automatically, by the system of record, coded 9 as bankrupt; is that correct?</p> <p>10 A. Yes. The maintenance behind the 11 scene, once the match is made, codes it and 12 moves the account to where it needs to be.</p> <p>13 Q. I got you.</p> <p>14 And you don't know who set up 15 that system in terms of using Resurgent to do 16 that and the IT doing that match and how that 17 all occurs. It's just always been that way 18 as far as you know.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Any other work that 21 Resurgent does for the bank that you're aware 22 of?</p> <p>23 A. Resurgent houses all of our media 24 that we use or we package together with 25 sales.</p>	<p>1 A. Resurgent has access to it.</p> <p>2 Q. Okay.</p> <p>3 A. We send it to them. They store 4 it. They have access to it.</p> <p>5 Q. And who do they give that 6 information out to, if anyone?</p> <p>7 A. They'll -- the accounts that are 8 sold to Midland, they'll send those -- that 9 media to Midland for those accounts.</p> <p>10 Q. And the ones that aren't sold to 11 Midland, what happens to that media?</p> <p>12 A. It stays at Resurgent.</p> <p>13 Q. So any of the debt that's 14 retained by Sherman Originator, if they need 15 to access that information, they would go to 16 Resurgent and access that media there. Is 17 that the way it works?</p> <p>18 A. They would -- Resurgent services 19 the accounts for Sherman.</p> <p>20 Q. Okay.</p> <p>21 A. So Resurgent are -- they're the 22 only ones who have access.</p> <p>23 Q. I got you. Okay.</p> <p>24 So Resurgent is doing the 25 servicing, so if any question came up about</p>

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1 A. I don't know for sure. 2 Q. Do they do any -- if you already 3 have -- is that the way all the bankrupt 4 pools are set up as a result of that 5 scrubbing process, or is there a bankrupt 6 pool that's generated right at FDR that comes 7 to the bank and then to Resurgent? 8 A. The bank can be notified in a 9 variety of ways of a bankruptcy before the 10 account has charged off. 11 Q. Okay. 12 A. So for example, the customer can 13 call and tell us and give us their attorney 14 information. We could receive a letter from 15 a customer, in which case, once we obtain all 16 that, we code it bankruptcy, and it goes into 17 the proper queue. 18 Q. Okay. 19 A. Okay. 20 Q. And it -- and that queue would be 21 at the system of record. 22 A. Right, in addition to the file we 23 receive from Resurgent that we scrub up 24 against. So between those ways, that's what 25 creates the pool for the bankruptcy.	1 is that made? Is there criteria used to make 2 that cut? 3 A. The contractual agreement between 4 Sherman Originator III and Midland determines 5 what goes into their pool. 6 (Pages 112 through 115 were 7 deemed confidential and are 8 bound separately.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 110	Page 116
1 Q. So you already have some accounts 2 in the system of record that you know are in 3 bankruptcy that you're going to want to sell, 4 and then you also come across some of these 5 through the scrubbing process, and all that 6 is paired together or put together in a 7 bankrupt pool on a monthly basis, and then 8 that bankrupt pool is sold. Is that correct? 9 A. Yes. 10 Q. And then what happens after the 11 scrubbing process at Resurgent in terms of 12 the charged-off accounts? They've scrubbed 13 out the bankrupt stuff. They're now left 14 with a charged-off pool with no bankruptcies 15 in it. What does it do with that? 16 A. Once the bankruptcies are out of 17 it, that's when the cut is made for what's 18 going to be sold to Midland and what is 19 retained by Sherman. 20 Q. Okay. The cut is made. That 21 pool is sort of -- that pool is cut, so some 22 of that pool would go to Midland and some of 23 it will go to Sherman? 24 A. Yes. 25 Q. How is that cut determined? How	1 * * * * * 2 BY MR. SHELLY: 3 Q. And how about the deceased pool, 4 is that sold to Midland, or is that always 5 retained by Sherman Originator III? 6 A. It's an entity of Sherman. 7 Q. Do you know what entity that is? 8 A. PYOD. 9 Q. PYOD. Is that like capital PYOD? 10 A. Yes. 11 Q. I've seen that in the past. So 12 is that an acronym for something? 13 A. Not -- I -- I don't know. 14 Q. Okay. But they receive all the 15 deceased accounts; is that correct? 16 A. Yes. 17 Q. Do you know how Sherman 18 Originator III -- strike that. 19 Is it your understanding that the 20 charged-off accounts that Midland buys, that 21 they try to collect on those accounts? Is 22 that why they're purchasing them, to try to 23 get some money back from those people on 24 those charged-off accounts? 25 A. Yes.

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1 Q. And the stuff that gets culled
 2 out of there -- you know, you said that under
 3 the contractual relationship between Sherman
 4 and Midland, it can only be a certain
 5 percentage that can be the first payment
 6 default.

7 A. No.

8 Q. Oh, I'm sorry.

9 A. I referenced that as an example
 10 of what could be excluded from a pool.

11 Q. Okay.

12 A. I didn't say it was directed to
 13 Midland.

14 Q. I appreciate that. Okay. I
 15 understand that.

16 But whatever the criteria is that
 17 puts certain things to -- let's just use that
 18 as an example. I understand that's not
 19 necessarily -- but as an example of what you
 20 were talking about, if the contract criteria
 21 required that only 5 percent of what goes to
 22 Midland can be first payment default, what
 23 happens to the remaining first payment
 24 defaults? Would they be retained by Sherman
 25 Originator?

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1 pool, and it also has all of the deceased
 2 pool; is that correct?

3 A. Yes.

4 Q. And you don't know what, if
 5 anything, Sherman Originator does with any of
 6 those pools, do you?

7 A. I have knowledge of that, yes.

8 Q. Okay. What do they do?

9 A. The contractual charge-off is
 10 worked through their network of agencies for
 11 recoveries. They file proof of claims on
 12 Chapter 13s if it meets certain criteria,
 13 balance cuts. And then Chapter 7s, they just
 14 sit there.

15 Q. They just sit there.

16 A. They are not worked. They are
 17 not actively worked or lettered.

18 Q. Do you know if any payments are
 19 ever received on those Chapter 7s that are
 20 just sitting there?

21 A. I don't know.

22 Q. Who would know?

23 A. Someone at Resurgent would know.

24 Q. Do they do anything else with
 25 that account in terms of the way they work

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1 A. Sherman Originator III would
 2 purchase them.

3 Q. And I take it that -- so that
 4 Sherman Originator III is purchasing kind of
 5 the leftover charged-off accounts that aren't
 6 being sold to Midland. That's one pool;
 7 correct?

8 A. I don't know that I would
 9 classify it as that.

10 Q. Okay.

11 A. I don't know how they -- I mean,
 12 I know they have to meet Midland's criteria,
 13 but what is retained, that's -- I don't know.

14 Q. So if it doesn't meet Midland's
 15 criteria, it remains as a pool. You don't
 16 know what happens to that pool or -- I'm not
 17 asking if you can tell me what makes up that
 18 pool. I understand you don't know what makes
 19 up that pool. I'm just wondering what
 20 happens to that remaining pool that doesn't
 21 meet Midland's criteria. What happens to
 22 that pool?

23 A. It's with Sherman Originator III.

24 Q. So Sherman Originator has that
 25 pool. It also has all of the bankruptcy

1 at --

2 A. What are you referring to?

3 Q. The contractual charge-off. You
 4 said they worked through their network of
 5 agencies for recoveries. They file proof of
 6 claims on Chapter 13s if it meets that
 7 criteria. You said "balance cuts." What did
 8 you mean by "balance cuts"?

9 A. I believe there's -- there's a
 10 balance cut criteria for filing a proof of
 11 claim. I don't recall what that is.

12 Q. Okay. I don't understand what
 13 that means. Can you -- do you know -- when
 14 you say that, what are you referring to?

15 A. A proof of claim?

16 Q. A balance cut with respect to a
 17 proof of claim.

18 A. There's -- I mean, at some point,
 19 there's no -- you wouldn't file a proof of
 20 claim on something maybe \$115.

21 Q. Okay.

22 A. But you would on something \$500.

23 Q. That's what I thought you meant.

24 A. Yeah.

25 Q. I just wanted to make sure that

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<p>1 A. There was an update done last 2 year. I think there's a revision page. 3 Q. And do you recall what update did 4 occur last year in terms of that procedure? 5 A. I recalled the org chart being 6 added for the debt buying committee so -- 7 Q. Anything else that you recall? 8 A. Not off the top of my head. 9 Q. But nothing in terms of the 10 process you've described has changed. It's 11 been the same for the whole time that you've 12 been there; correct? 13 A. The only change that's happened, 14 and I don't know that it's updated in the 15 manual, is we used to house the media, but 16 now Resurgent does. 17 Q. And why is that? 18 A. Storage space from IT. 19 Q. Does Credit One pay Resurgent to 20 house that media? 21 A. No. 22 Q. So they house it free of charge 23 for the bank. 24 A. For Sherman. It's not ours. 25 Q. Okay.</p>	<p>1 understand that change occurred, just the 2 lack of space? 3 A. That was the reason that I knew 4 of. 5 Q. And are you aware of any -- that 6 the procedure -- prior to you coming onboard 7 three years ago, if that procedure manual -- 8 if the procedures relating to this sale and 9 transfer process were any different prior to 10 your coming onboard? 11 A. I don't know. 12 Q. Okay. We were talking earlier 13 about the sold accounts and these pools, and 14 certain pools go to Midland based if they 15 meet the contract criteria between Midland 16 and Sherman, and then the other ones that 17 don't meet that criteria stay with Sherman 18 Originator? 19 Could you give me an estimate of 20 the quantity of units, accounts -- not dollar 21 amounts but accounts within a given pool that 22 are retained by Sherman Originator and that 23 actually go to Midland on a monthly basis in 24 these pools. 25 A. I mean, I lump everything</p>
<p>1 A. We sold the accounts. 2 Q. So the bank used to house 3 Sherman's media. 4 A. Right. 5 Q. And you basically just didn't 6 have enough room, so Resurgent does it. 7 Now, is the bank paid by Sherman 8 to house that media? 9 A. No. 10 Q. Do you know if there was any sort 11 of contract or any sort of a document 12 outlining the fact that the bank should, in 13 fact, house that media for Sherman? 14 A. It's not that we house it. It's 15 just we retained it. 16 Q. Okay. 17 A. I mean, we sent it to them with 18 the sales file, but we also retained a copy 19 of it. 20 Q. So what goes to Resurgent now is 21 the copy, or is it just there's no copy kept? 22 It's just like one -- 23 A. It's just all the media. We 24 would have to re-create it. 25 Q. Is that the only reason you</p>	<p>1 together for my tracking as the number of 2 units sold, so I don't -- I don't track the 3 volume. 4 Q. Whether or not you track it, if 5 you're just aware, does most of the pooled 6 sold debt go to Midland, or does most of that 7 pooled debt stay with Sherman Originator? 8 A. It's my understanding it's 9 approximate 50/50. 10 Q. Okay. And that's good. That's 11 your understanding. About half of it goes to 12 Midland, half of it stays with Sherman? 13 A. And that's on a contractual 14 charge-off only. 15 Q. Right. Okay. On the contractual 16 charge-off only. What other charges are we 17 talking about? 18 A. The bankruptcy and deceased. 19 Q. So they always stay either with 20 Sherman or, in the case of the deceased, 21 PYOD. 22 A. Right. 23 Q. So it's just a contractual 24 charge-off that's split roughly 50/50? 25 A. Uh-huh.</p>

<p>1 onboard?</p> <p>2 A. No.</p> <p>3 Q. Can you explain to me what a</p> <p>4 process flow is.</p> <p>5 A. The purpose of it is to depict</p> <p>6 the end-to-end activities that occur and the</p> <p>7 decisioning that has to occur when you're</p> <p>8 executing a procedure.</p> <p>9 Q. Do you know what documents or</p> <p>10 information was utilized to create these</p> <p>11 process flows or this process flow?</p> <p>12 A. I know the -- in talking with</p> <p>13 Mary, that it was just -- it was face-to-face</p> <p>14 meetings, and they just talked through how</p> <p>15 everything went.</p> <p>16 Q. Okay. The various manuals that</p> <p>17 are in-house at Credit One, they weren't</p> <p>18 utilized in any way to help flesh out these</p> <p>19 process flows?</p> <p>20 A. I don't know 'cause I wasn't a</p> <p>21 part of the process.</p> <p>22 Q. You said you first became aware</p> <p>23 of these this week. Can you explain the</p> <p>24 circumstances by which you became aware of</p> <p>25 this document.</p>	<p>1 review?</p> <p>2 A. Documents related to what the</p> <p>3 case was about, which is what I was told was</p> <p>4 credit bureau reporting on a bankrupt</p> <p>5 account.</p> <p>6 Q. So do you know what she did to</p> <p>7 locate such documents for you?</p> <p>8 A. She got them from the recovery</p> <p>9 drive.</p> <p>10 Q. And what did she do? She went on</p> <p>11 the recovery drive and looked for anything</p> <p>12 that had to do with credit bureau reporting</p> <p>13 or anything to do with bankruptcies?</p> <p>14 A. Right.</p> <p>15 Q. And what sort of document --</p> <p>16 other than this document, what documents did</p> <p>17 she come up with for you to review that were</p> <p>18 relating to credit bureau reporting or</p> <p>19 bankruptcy accounts?</p> <p>20 A. The recovery manual, the recovery</p> <p>21 procedures, and this.</p> <p>22 Q. Okay.</p> <p>23 A. And the contracts.</p> <p>24 Q. And the contracts. Okay.</p> <p>25 Did you ask her to go through</p>
<p>Page 174</p> <p>1 A. Mary wanted to make sure I had</p> <p>2 items to review for the deposition today.</p> <p>3 Q. When you say "Mary," Mary who?</p> <p>4 A. Mary who reports to me. Despina.</p> <p>5 She also goes by -- Despina is her legal --</p> <p>6 Q. I just wanted to make sure</p> <p>7 that's --</p> <p>8 A. Despina is her legal name. She</p> <p>9 goes by Mary.</p> <p>10 Q. Why was she the person who wanted</p> <p>11 to make sure you had items to review for the</p> <p>12 deposition?</p> <p>13 A. Because I was on vacation and</p> <p>14 traveling for several weeks so --</p> <p>15 Q. Okay.</p> <p>16 A. First time I've been back in the</p> <p>17 office, basically, is this week.</p> <p>18 Q. Did you ask her -- did you say to</p> <p>19 her, Mary, I need to review documents. I'm</p> <p>20 going to be deposed this week. I want you to</p> <p>21 get -- did you tell her to get X, Y, and Z,</p> <p>22 or did you tell her to get a type -- you</p> <p>23 know, get me all the documents? Get me</p> <p>24 certain types of documents? What did you</p> <p>25 actually tell her to get together for you to</p>	<p>Page 176</p> <p>1 E-mails to locate any documents that might</p> <p>2 have to do with those subjects?</p> <p>3 A. No.</p> <p>4 Q. And is there a reason you didn't</p> <p>5 do that?</p> <p>6 A. I just didn't think of it.</p> <p>7 Q. Do you think there might be</p> <p>8 E-mails of yours that relate to those</p> <p>9 subjects?</p> <p>10 A. Of mine?</p> <p>11 Q. Yes.</p> <p>12 A. That relate to credit reporting?</p> <p>13 Q. Or bankruptcies.</p> <p>14 A. Or bankruptcies? Just having to</p> <p>15 do with a sale.</p> <p>16 Q. How about people within your team</p> <p>17 that you would oversee, would you expect</p> <p>18 there to be E-mails there relating to any of</p> <p>19 those subjects?</p> <p>20 A. No, 'cause Mary was the only one</p> <p>21 on my team that dealt with the recovery</p> <p>22 process.</p> <p>23 Q. Okay.</p> <p>24 A. Everybody else deals with</p> <p>25 something else.</p>

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1 Q. How about Mary, did you ask her
2 to look at her E-mails to see if she has
3 anything relating to those subjects?
4 A. No, I didn't ask her.
5 Q. Do you think she would have
6 E-mails relating to those subjects?
7 A. I don't know.
8 Q. But she did come up with those
9 manuals and this document. Where was this
10 document located, do you know?
11 A. In the recovery drive. She had
12 mentioned she had forgotten it, because the
13 person who put it together has been gone from
14 the bank for over a year.
15 Q. The person that put this
16 flowchart together has been --
17 A. Yes.
18 Q. But who manages the recovery
19 drive that you're talking about?
20 A. Mary and I do.
21 Q. Had you ever searched that
22 recovery drive, prior to your request to Mary
23 last week, for documents that are responsive
24 in this case?
25 A. No.

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1 A. Yeah, that's not Route 66.
2 Q. Yeah, it looks like Route 60.
3 Okay. I got you. It's a play off of
4 Route 66. I got you. Okay.
5 And is that a criteria set up by
6 some industry group or what exactly?
7 A. Well, it's a certification
8 process, and the history of it started back
9 in the manufacturing world with Motorola.
10 And you go through a process to get
11 certified, and the goal is that you help
12 people improve their processes and reduce
13 defects.
14 Q. So I take it at the time this
15 flow was created and this was going on,
16 Credit One Bank was attempting to get
17 certified under that standard; is that
18 correct?
19 A. No.
20 Q. No? Okay.
21 A. We were attempting to document
22 our processes. Barb, who did the flow, is a
23 certified Six Sigma black belt.
24 Q. So there was no -- there was no
25 need or attempt to get certified. What was

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1 Q. And did you search, at any point
2 in time, your hard drive on your computer for
3 any documents that might be responsive in
4 this case?
5 A. No.
6 Q. Maybe you could -- first of all,
7 you said something like Sig Six or something
8 like that. Is that what --
9 A. Six Sigma.
10 Q. Okay. What is that?
11 A. It's a discipline for reducing --
12 let's see. Six Sigma is a discipline -- it's
13 the DMAIC approach, define, measure, analyze,
14 improve, control. It's a process improvement
15 tool -- discipline.
16 Q. On the first page here, there's a
17 triangle up at the top there. It has
18 Route 60. It says process improvement,
19 process design, process management. Is that
20 relating to this discipline that you're
21 referring to?
22 A. Yes, 'cause in the middle of the
23 triangle is a symbol for Six Sigma.
24 Q. Okay. So that's not a 60. I
25 even have glasses on now so --

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1 created here was a way to show that the bank
2 either could or was meeting that
3 certification standard in-house?
4 A. It had -- this had nothing to do
5 with any certification.
6 Q. Okay.
7 A. It just was an attempt to
8 document our processes.
9 Q. So it's just -- all she did was
10 take the knowledge she had, as being
11 certified for this, herself. She took that
12 knowledge and applied that knowledge to what
13 the bank did to create flow charts, basically
14 showing here's what the bank does.
15 A. Right.
16 Q. For in-house. Okay.
17 What was the purpose of that for
18 the bank? I mean, why did the bank want that
19 at that time?
20 A. Well, the goal of Six Sigma is to
21 reduce defects, so once you flow something
22 out, you can see if there's redundancy or if
23 there's a step that doesn't need to happen or
24 if there is a step that does need to happen.
25 That's the purpose.